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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

SHIRLEY LEE,

Plaintiff and Appellant,

v.

NADER AGHA, et al.,

Defendants and Respondents.

H033991

(Santa Clara County
Super. Ct. No. CV087963)

In 2001, appellant Shirley Lee lost her home in a nonjudicial foreclosure sale. In 2007, appellant brought this action against several defendants, alleging that the foreclosure was fraudulent and invalid. Appellant later amended her complaint, bringing in other defendants. In 2008, the trial court granted pretrial defense motions, brought on statute of limitations grounds, which resulted in (1) a 2008 judgment of dismissal following demurrer in favor of all but one defendant and (2) a 2009 judgment on the pleadings in favor of the remaining defendant. This attempt to appeal followed.

As explained below, we shall dismiss the appeal for lack of jurisdiction. The notice of appeal specifies only the first judgment, and as to that judgment, the appeal is untimely.

BACKGROUND

In June 2007, appellant brought this action, naming as defendants Nader Agha, Holman Building Associates, Ltd., Ellie's Telecom, Inc., and Does 1-100. In September 2007, appellant filed a first amended complaint, which named additional defendants (substituting them for Does), including Kamran Pourshams, Kirti Jobalia, Jeff Toewes, and Mujtaba Agha. In March 2008, appellant filed a second amended complaint.

With the exception of Mujtaba Agha, all of the defendants demurred to the second amended complaint. Defendant Mujtaba Agha answered and later moved for judgment on the pleadings.

Judgment after Demurrers

In May 2008, the court sustained the demurrers without leave to amend, finding the action time-barred. In July 2008, the court ordered dismissal in favor of the demurring defendants.

Appellant challenged that judgment in the trial court, first by a motion to vacate (filed July 18, 2008), then by a motion to set aside the judgment (filed October 31, 2008), and finally by a motion for leave to file a third amended complaint (filed November 4, 2008). The court denied appellant's motions at a hearing held on December 18, 2008.

Judgment on the Pleadings

In October 2008, defendant Mujtaba Agha filed a motion for judgment on the pleadings, which the court granted at the hearing held on December 18, 2008. Formal judgment for defendant Mujtaba Agha was entered on January 22, 2009.

Appeal

Appellant filed a notice of appeal on March 12, 2009. The notice states that the appeal is taken from "Judgment of dismissal after an order sustaining a demurrer."

DISCUSSION

The appealability of both judgments is challenged in one of the three respondents' briefs on appeal. As explained below, resolution of that challenge is dispositive. We cannot review the July 2008 judgment of dismissal in favor of the demurring defendants, because any appeal from that judgment is untimely; we cannot review the January 2009 judgment on the pleadings in favor of defendant Mujtaba Agha, because no appeal was taken from that judgment.

Judgment of Dismissal

“The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal.” (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56; *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 667, 674; *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 818.)

As appellant observes, a valid motion to vacate the judgment extends the time to appeal until the earliest of three dates: 30 days service of an order denying the motion, or 90 days after filing of the motion, or 180 days after entry of judgment. (Cal. Rules of Court, rule 8.108(c).) But in any event, 180 days after entry is still the outside limit to appeal a judgment. (*City of Los Angeles v. Glair, supra*, 153 Cal.App.4th at p. 818.)

Here, the judgment of dismissal in favor of the demurring defendants was entered July 8, 2008; adding 180 days brings the date to December 5, 2008. Appellant brought her first motion to vacate on July 18, 2008; adding 90 days brings the date to October 16, 2008. The clerk mailed the order denying appellant's motions on December 18, 2008; adding 30 days brings the date to January 17, 2009. The earliest of these dates is October 16, 2008, with the outside time limit being December 5, 2008. This appeal was not brought until March 12, 2009. By then, the time for filing an appeal from the July 2008

judgment of dismissal in favor of the demurring defendants had long expired. (*Russell v. Foglio* (2008) 160 Cal.App.4th 653, 660-661.)

Appellant nevertheless maintains that her appeal is timely. In her opening brief on appeal, appellant states that she was “mail served a copy of the Judgment in favor of Respondent Mujtaba Agha on January 15, 2009” and that she was “mail served a copy of Judgment After Hearing in favor of” the other respondents “on January 28, 2009.” In her reply brief, she explains: “Appellant is appealing the judgments from the hearing on December 18, 2009 [*sic*] which were filed on January 22, 2009 and served January 15, 2009. Thus, Appellant had 60 days from the date she was served with a copy of the judgment.”

Only one judgment resulted from the hearing on December 18, 2008: the judgment on the pleadings in favor of defendant Mujtaba Agha.¹ And as we now explain, appellant has not appealed from that judgment.

Judgment on the Pleadings

A reviewing court lacks jurisdiction to review a judgment from which the appellant has not appealed. (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239.) The notice of appeal must identify “the particular judgment or order being appealed.” (Cal. Rules of Court, rule 8.100(a)(2).) “While a notice of appeal must be liberally construed, it is the notice of appeal which defines the scope of the

¹ As a general rule, an order denying a motion to vacate a judgment is not appealable. (See *City of Los Angeles v. Glair*, *supra*, 153 Cal.App.4th at p. 820; *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 690; but see *Hollister Convalescent Hosp., Inc. v. Rico*, *supra*, 15 Cal.3d at pp. 663-664; *City of Long Beach v. Crocker National Bank* (1986) 179 Cal.App.3d 1114, 1118, fn. 6; see generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §§ 197-201.) In this case, even assuming that an exception to that general rule applied, the appeal would be untimely, since it was not filed within 60 days of the clerk’s mailing of the order. (*Russell v. Foglio*, *supra*, 160 Cal.App.4th at p. 659.) Furthermore, appellant’s notice of appeal does not mention the order. (*City of Long Beach v. Crocker National Bank*, at p. 1118, fn. 7.)

appeal by identifying the particular judgment or order being appealed.” (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 967.)

Here, the notice of appeal identifies the subject of the appeal as “Judgment of dismissal after an order sustaining a demurrer.” The date of the judgment is not specified. According to appellant’s subsequent civil case information statement, the challenged judgment was entered December 18, 2008, and notice of entry of judgment was given on January 22, 2009. The civil case information statement also mentions appellant’s second post-judgment motion, indicating that it was filed on October 31, 2008, and denied on December 18, 2008, with the denial served on January 15, 2009. Attached to the civil case information statement are (1) the December 2008 order denying appellant’s motions and granting the motion for judgment on the pleadings, and (2) the January 2009 judgment on the pleadings for defendant Mujtaba Agha.

“Despite appellant’s statement to the contrary in the civil case information statement,” she “has not appealed the judgment” on the pleadings. (*Morton v. Wagner, supra*, 156 Cal.App.4th at p. 967.) Her “notice of appeal identifies only” the judgment of dismissal after demurrer. (*Ibid.*; see also, e.g., *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 864 [in a case with two appealable judgments, an appeal from the later judgment does not permit review of the earlier judgment].) “In a case where several defendants are joined and separate judgments are entered as to each a notice of appeal specifically designating one of these judgments cannot be interpreted to include others not mentioned.” (*Dimity v. Dixon* (1925) 74 Cal.App. 714, 718.) Applying that principle here, the notice of appeal from the judgment of dismissal in favor of the demurring defendants does not include the later judgment on the pleadings in favor of Mujtaba Agha.

CONCLUSION

To summarize, (1) we have no jurisdiction to review the July 2008 judgment of dismissal in favor of the demurring defendants, because the time for appeal from that judgment has expired, and (2) we cannot review the January 2009 judgment on the pleadings in favor of defendant Mujtaba Agha, because the notice of appeal did not identify that judgment but instead specified the judgment of dismissal after demurrer.

DISPOSITION

The appeal is dismissed. Respondents shall have costs on appeal.

McAdams, J.

WE CONCUR:

Elia, Acting P.J.

Bamattre-Manoukian, J.